

CHAPTER NO. 397

SENATE BILL NO. 1789

By Harper, Trail, Burchett, Burks

Substituted for: House Bill No. 1624

By Kernell, Cooper, Pruitt, Patton, Odom, David Davis, Montgomery, Bowers, Arriola, Walker, Langster

AN ACT To amend Tennessee Code Annotated, Title 71, Chapter 2, relative to the Tennessee Commission on Aging.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 2, is amended by deleting Part 1 in its entirety and by substituting instead Sections 2 through 11 of this act as new Part 1.

SECTION 2.

Section 71-2-101. This part may be cited and shall be known as the "Tennessee Commission on Aging and Disability Act of 2001".

SECTION 3.

Section 71-2-102. The purposes of this part are to provide a comprehensive and coordinated service system for the state's aging population, giving high priority to those persons in greatest need, to conduct studies and research into the needs and problems of the aging, and to provide a system of home and community-based long-term care services which is responsive to the needs of all Tennesseans regardless of age, disability, or economic status.

SECTION 4.

Section 71-2-103. As used in this part, unless the context otherwise requires:

(1) "Area agency on aging" means any agency which has been designated by the commission to plan for and provide services to the elderly and disabled within a defined geographic area;

(2) "Commission" means the Commission on Aging and Disability;

(3) "Home and community based long-term care" means supportive services, including but not limited to personal assistance, homemaker and chore services, adult day services, assistive technology, home delivered meals, assisted transportation and mobility services, respite and hospice care, and rehabilitative care, which are provided to older persons and individuals with disabilities to remain independent and avoid inappropriate institutionalization and which help individuals maintain physical, social, and spiritual independence in the least restrictive environment;

(4) "Older Americans Act" means the Older Americans Act of 1965, as amended (42 U.S.C. § 3001 et seq.); and

(5) "Planning and service area" means a geographical division of the state which serves as an administrative unit for the purpose of planning and delivering services to older persons.

SECTION 5.

Section 71-2-104. (a) There is hereby created a commission known as the Tennessee Commission on Aging and Disability, which shall plan, develop, and administer projects, programs, services and state and federal funds designated for, and relating to, disabled adults and older persons in this state, including those sponsored by the federal government, when such projects, programs and services are not the specific responsibility of another state agency pursuant to some other federal or state law. The commission shall be designated as the sole state agency to plan and administer all state activities related to and authorized under the Older Americans Act.

(b) The commission shall consist of twenty-five (25) members, who shall be persons who provide leadership in programs for the elderly and disabled in the state, twenty-three (23) of whom shall be appointed by the governor in accordance with the provisions of this part. Representatives may come from such diverse areas as housing, recreation, employment, medicine, nursing, social

service, business, adult education, long-term care, religion, research and advocacy. It is desirable that the commission membership reflect the geographic diversity of the state, and include minorities and women at least in proportion to their presence in the state's population and that at least one-half (1/2) of the membership be representative of the population served. Staff members of programs funded wholly or in part by the commission shall be ineligible to serve as commission members.

(c) (1) Members of the commission shall be appointed as follows:

(A) One (1) person shall be appointed from the rural area of each of the nine (9) planning and service areas in consultation with each of the nine (9) advisory councils to the nine (9) area agencies on aging. Such persons may be appointed from two (2) persons nominated by each of such advisory councils. Nothing shall preclude members of such advisory councils from being appointed as commission members;

(B) Five (5) additional persons shall be appointed, one (1) from each of the five (5) urban areas of Shelby, Davidson, Hamilton and Knox counties and the Tri-City area of Bristol, Kingsport and Johnson City, in consultation with each of the advisory councils to the area agencies on aging in those areas. Each of such persons may be appointed from two (2) persons nominated by each of such advisory councils. Nothing shall preclude members of such advisory councils from being appointed as commission members;

(C) One (1) member of the governor's personal staff shall be appointed;

(D) One (1) person who is an active member of a chartered, statewide organization which advocates exclusively for older persons shall be appointed. Each such organization may submit two (2) nominations for this appointment;

(E) One (1) person who is an active member of a federally chartered organization which advocates exclusively for older persons having membership statewide with chapters chartered in this state shall be appointed. Each such organization may submit two (2) nominations for this appointment;

(F) One (1) person who is an active member of a chartered, statewide organization which advocates exclusively for disabled persons shall be appointed. Each such organization may submit two (2) nominations for this appointment;

(G) The commissioners of the Departments of Human Services, Health, Veterans Affairs, and Mental Health and Developmental Disabilities, and the executive director of the Council on Developmental Disabilities; and

(H) The speaker of the senate and the speaker of the house of representatives each shall name one (1) legislator from such speaker's respective house to serve on the commission as ex officio members without vote to attend and sit with the commission in open meetings, in order to report back to the general assembly on actions being taken or considered by the commission.

(2) The governor may ask the nominating body in any case for additional nominees.

(d) As vacancies occur on the commission, persons shall be appointed to fill the vacancy for the unexpired term, in accordance with the original nomination process.

(e) (1) Members appointed to serve on the Commission on Aging and Disability pursuant to this section shall be appointed in accordance with the criteria established in this section. Members of the Commission on Aging and Disability as it existed prior to July 1, 2001, may be eligible for nomination and appointment pursuant to the criteria established in this section.

(2) The terms of office for members of the commission shall be six (6) years, except for members of the governor's personal staff and cabinet whose terms shall be coterminous with that of the appointing governor, and except for the legislators appointed pursuant to subdivision (c)(1)(H) whose terms shall be coterminous with the terms for which they have been elected to the general assembly. Vacancies shall be filled by appointment pursuant to the criteria in this section only for the remainder of the unexpired term.

(3) A two (2) year absence from commission membership qualifies any member for reappointment following the criteria of this section.

SECTION 6.

Section 71-2-105. (a) The commission shall:

(1) Meet as necessary to transact business, provided, that meetings shall be held at least quarterly;

(2) Promulgate bylaws to provide for the election of officers, establishment of committees, meetings, and other matters relating to commission functions;

(3) Elect a chair, a vice chair, and three (3) representatives (one (1) from each of the three (3) grand divisions) who shall comprise the executive committee to function between quarterly meetings;

(4) Allocate funds for projects and programs for older persons and disabled adults, subject to the limits of the appropriation by the general assembly and funds available or received from the federal government for such projects and programs. The commission is authorized to accept funds from the federal government and private sources and to administer such funds to achieve its purposes pursuant to the provisions of § 71-2-104(a);

(5) Serve as an advocate within government and in the community for older persons and disabled adults in Tennessee;

(6) Designate planning and service areas and area agencies on aging in accordance with the Older Americans Act and federal regulations promulgated thereunder. The commission shall review the boundaries of the planning and service areas from time to time and shall change them as necessary to comply with the Older Americans Act or to reflect changes in governmental boundaries or major changes in population distribution;

(7) Adopt the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, for the purpose of administrative hearings and rulemaking as required under this part;

(8) Receive the cooperation of other state departments and agencies in carrying out the policies and objectives of this part;

(9) Employ or dismiss an executive director by a majority vote of the membership to which the commission is entitled, subject to personnel regulations of the state. The commission may fix the executive director's duties and responsibilities which are in addition to those specified in this part. The commission shall evaluate periodically the performance of the executive director; and

(10) Enter into such contracts and make such grants within the limits of appropriated funds, as are necessary or appropriate under this part, and in a manner consistent with state or federal law.

(b) In addition to the powers, responsibilities or duties granted to the commission elsewhere in this part, the commission may:

(1) Promulgate, amend, revise, and rescind such rules as are necessary and appropriate to carry out the purposes of this part in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5;

(2) Create subcommittees to undertake such special studies as it shall authorize and include in such subcommittee persons qualified in any field of activity relating to aging and/or disability;

(3) Advise the governor and the heads of state departments and agencies regarding policies, programs, services, allocation of funds, and the needs of older persons and disabled adults in Tennessee and make recommendations for legislative action to the governor and to the general assembly;

(4) Hold hearings, conduct research and other appropriate activities to determine the needs of older persons and disabled adults in the state, including particularly, but not limited to, their needs for health and social services, and to determine the existing services and facilities, private and public, available to meet those needs;

(5) Develop and conduct, alone or in coordination with other agencies, research and demonstration projects and programs that provide training, education, and services to advance the interests of older persons and disabled adults; and

(6) Stimulate more effective use of existing resources and services for older persons and disabled adults and develop programs, opportunities and services which are not otherwise provided for older persons and disabled adults, with the aim of developing a comprehensive and coordinated system for the delivery of health and social services.

(c) Nothing in this act or Title 71, Chapter 5, Part 14 shall authorize the commission to exercise any control or authority over any aspect of the administration of programs for home and community based long-term care that are operating on the basis of federal waivers in effect on the effective date of this act.

SECTION 7.

Section 71-2-106. Members of the commission shall receive no compensation for their services other than a reimbursement for traveling and other expense incurred in the attendance of meetings required by this part or other meetings authorized by the commission. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the attorney general and reporter.

SECTION 8.

Section 71-2-107. (a) The executive director shall be the chief administrative officer of the commission and, pursuant to § 71-2-105, shall serve at the pleasure of the commission. The director shall be a full-time employee of the commission and shall have such education as deemed necessary by the commission, with a minimum of five (5) years' experience in the fields of aging or disability, or administrative experience as necessary to administer the programs under this part. The executive director shall have the authority to conduct ordinary and necessary business in the name of the commission in accordance with the provisions of this part or as determined by the commission.

(b) The executive director shall:

(1) Be available to serve or be represented on state level committees or bodies where the purpose of that state body or committee is concerned with the general health, education or welfare of the citizens of Tennessee when older persons or disabled adults are affected by the decisions of that body;

(2) Develop, as required under the provisions of the Older Americans Act, a plan for state programs, services and activities for older persons, to be updated periodically;

(3) Supervise the expenditure of funds and be responsible for complying with all applicable provisions of state and federal law in the receipt of and disbursement of funds;

(4) Serve as an advocate within government and in the community for older persons and disabled adults in Tennessee;

(5) Recommend to the commission such rules as are necessary and appropriate to carry out the purposes of this part;

(6) Employ or contract for the services of experts and technical consultants as may be necessary to carry out the purposes of this part;

(7) Conduct evaluations and prepare reports in accordance with the terms of the Older Americans Act and other state and federal laws;

(8) Within the limits of appropriated funds, employ such personnel as may be required to carry out the provisions of this part. The executive director shall appoint and may remove all such personnel in accordance with the civil service system; and

(9) Provide staff support to the commission.

SECTION 9.

Section 71-2-108. If any matter before the commission involves a project, transaction, or relationship in which a member or a member's associated institution, business or agency has a direct or a conflicting interest, the member shall make known to the commission that interest and shall be excused from the proceedings.

SECTION 10.

Section 71-2-109. (a) Within the commission there shall be an established office of the state long-term care ombudsman (hereinafter "the office"), which shall carry out those functions delineated in § 307(a)(12) of the Older Americans Act.

(b) The office shall designate and contract with, either directly or through the area agency on aging, a local grantee to establish and operate a local ombudsman program in each of the designated planning and service areas. Each local ombudsman program shall carry out the duties of the office in each area through paid staff and trained volunteers. For the purposes of carrying out those duties, and only to the extent required by § 307(a)(12)(H)(vi) of the Older Americans Act, each local program unit will be considered to be a "subdivision" of the office; provided, that this shall have no effect upon the character of local government or private agencies or corporations, and they shall not be considered to be agencies of the State of Tennessee.

(c) Paid staff and volunteers shall be trained as required by and under the supervision of the office, which shall certify those persons who have been properly trained as "representatives" of the office; provided, that local program employees and volunteers shall not be considered to be employees of the State of Tennessee. The office shall maintain a current listing of certified representatives. Certified representatives shall be immune from liability for acts or omissions committed within the scope of their assigned duties, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain.

SECTION 11.

Section 71-2-110. Notwithstanding any other provision of law, rule, regulation or policy to the contrary, the standards and procedures developed by the Commission on Aging and Disability relative to the nutrition program for older persons operated in accordance with the Older Americans Act shall not establish a threshold of an average of twenty (20) congregate meals per day for every site but shall first consider the remote location of a meal site. For such sites, if a determination is made by the commission that the majority of the older persons in the area served by the site are physically unable to attend a congregate meal site on a consistent basis and the health and well-being of such persons would be better maintained by receiving home delivered meals, the commission shall apply a threshold of an average of twenty (20) congregate and home-delivered meals a day for such sites.

SECTION 12. Tennessee Code Annotated, Title 71, Chapter 2, Part 1, is amended by adding the following new section:

Section 71-2-112. (a) The Commission on Aging and Disability shall require its contractors, grantees, and subcontractors to verify individual background information for newly-hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes.

(b) The Commission on Aging and Disability shall promulgate rules which develop standard procedures specifying minimum requirements applicable to verifying individual background information or performing a criminal history background check of all paid or volunteer in-home care providers for vulnerable elderly and disabled persons. The commission is expressly authorized to promulgate such rules as public necessity rules pursuant to Section 4-5-209 (a) (4) to provide an immediate effective date.

(c) If the criminal history background check is conducted by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation, it shall be conducted by the submission of fingerprint cards to the Tennessee Bureau of Investigation or the Federal Bureau of Investigation. Any cost incurred by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation shall be paid by the organization requesting such investigation and information. If a criminal history background check is conducted by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation, the payment of such costs shall be made in the amounts established by § 38-6-103.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 14, 2001


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2001


DON SUNDQUIST, GOVERNOR